

Proposed technical correction:

SECTION #.(a) G.S. 14-50.21 reads as rewritten:

→ **"§ 14-50.21. Separate offense.**

Any offense committed in violation of ~~G.S. 14-50.16~~ G.S. 14-50.17 through G.S. 14-50.20 shall be considered a separate offense." (2008-214, s. 3.)

SECTION #.(b) G.S. 14-50.25 reads as rewritten:

→ **"§ 14-50.25. Reports of disposition; criminal gang activity.**

When a defendant is found guilty of a criminal offense, other than an offense under ~~G.S. 14-50.16~~ G.S. 14-50.17 through G.S. 14-50.20, the presiding judge shall determine whether the offense involved criminal gang activity. If the judge so determines, then the judge shall indicate on the form reflecting the judgment that the offense involved criminal gang activity. The clerk of court shall ensure that the official record of the defendant's conviction includes a notation of the court's determination." (2008-214, s. 3; 2017-194, s. 13.)

SECTION #.(c) G.S. 14-50.41 reads as rewritten:

→ **"§ 14-50.41. Short title.**

This Article shall be known and may be cited as the "~~North Carolina Street Gang Nuisance Abatement Act~~ [~~North Carolina Criminal Gang Nuisance Abatement Act~~].""North Carolina Criminal Gang Nuisance Abatement Act." (2012-28, s. 1.)

Explanation: This proposed technical correction amends G.S. 14-50.21 and G.S. 14-50.25 to reflect that Section 1 of S.L. 2017-194 repealed G.S. 14-50.16. The original version of this proposed technical correction replaced the references to G.S. 14-50.16 with references to G.S. 14-50.16A. However, after consulting with a knowledgeable staff colleague, it appears that G.S. 14-50.17 is a better replacement since G.S. 14-50.16A is a definitions section and does not itself set out an offense.

This General Statutes Commission has already approved subsection (c) of the proposed technical correction, which amends G.S. 14-50.41 to conform to a change in the title of Article 13B of Chapter 14 of the General Statutes by S.L. 2017-194, s. 14.

Session law excerpt:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2017-194
HOUSE BILL 138**

AN ACT TO STANDARDIZE CRITERIA FOR CLASSIFICATION OF CRIMINAL GANG MEMBERSHIP, CREATE A SENTENCING ENHANCEMENT FOR CERTAIN CRIMES PERPETRATED BY GANG MEMBERS, AND INCREASE THE PENALTIES FOR CERTAIN GANG-RELATED OFFENSES.

Whereas, the General Assembly finds that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of criminal gangs; and

Whereas, the General Assembly also recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever and to lawfully associate with others who share similar beliefs; and

Whereas, the General Assembly finds a need for enhanced punishment of criminal gang activity to afford adequate protection of the people of North Carolina from the harms caused by criminal gangs; and

Whereas, it is the intent of the General Assembly to outlaw certain conduct associated with the existence and proliferation of criminal gangs and provide enhanced criminal penalties when crimes are committed in the course of criminal gang activity; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-50.16 is repealed.

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SECTION 4. Article 13A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-50.16A. Criminal gang activity.

Definitions. – The following definitions apply in this Article:

- (1) Criminal gang. – Any ongoing organization, association, or group of three or more persons, whether formal or informal, that (i) has as one of its primary activities the commission of criminal or delinquent acts and (ii) shares a common name, identification, signs, symbols, tattoos, graffiti, attire, or other distinguishing characteristics, including common activities, customs, or behaviors. The term shall not include three or more persons associated in fact, whether formal or informal, who are not engaged in criminal gang activity.
- (2) Criminal gang activity. – The commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit (i) any offense under Article 5 of Chapter 90 of the General Statutes or (ii) any offense under Chapter 14 of the General Statutes except Article 9, 22A, 40, 46, or 59 thereof, and further excepting G.S. 14-82, 14-145, 14-183, 14-184, 14-186, 14-190.9, 14-247, 14-248, or 14-313 thereof, and either of the following conditions is met:
 - a. The offense is committed with the intent to benefit, promote, or further the interests of a criminal gang or for the purposes of increasing a person's own standing or position within a criminal gang.
 - b. The participants in the offense are identified as criminal gang members acting individually or collectively to further any criminal purpose of a criminal gang.
- (3) Criminal gang leader or organizer. – Any criminal gang member who acts in any position of management with regard to the criminal gang and who meets two or more of the following criteria:
 - a. Exercises decision-making authority over matters regarding a criminal gang.

- b. Participates in the direction, planning, organizing, or commission of criminal gang activity.
 - c. Recruits other gang members.
 - d. Receives a larger portion of the proceeds of criminal gang activity.
 - e. Exercises control and authority over other criminal gang members.
- (4) Criminal gang member. – Any person who meets three or more of the following criteria:
- a. The person admits to being a member of a criminal gang.
 - b. The person is identified as a criminal gang member by a reliable source, including a parent or a guardian.
 - c. The person has been previously involved in criminal gang activity.
 - d. The person has adopted symbols, hand signs, or graffiti associated with a criminal gang.
 - e. The person has adopted the display of colors or the style of dress associated with a criminal gang.
 - f. The person is in possession of or linked to a criminal gang by physical evidence, including photographs, ledgers, rosters, written or electronic communications, or membership documents.
 - g. The person has tattoos or markings associated with a criminal gang.
 - h. The person has adopted language or terminology associated with a criminal gang.
 - i. The person appears in any form of social media to promote a criminal gang."

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→ **SECTION 14.** The title for Article 13B of Chapter 14 of the General Statutes reads as rewritten:

"North Carolina ~~Street~~Criminal Gang Nuisance Abatement Act."

rewriting those lines to read:

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SECTION 20. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 3:32 p.m. this 27th day of July, 2017

Comparison of Former G.S. 14-50.16 with G.S. 14-50.16A, with similar language highlighted:

<p>§ 14-50.16. Pattern of criminal street gang activity.</p> <p>(a) It is unlawful for any person employed by or associated with a criminal street gang to do either of the following:</p> <ol style="list-style-type: none"> (1) To conduct or participate in a pattern of criminal street gang activity. (2) To acquire or maintain any interest in or control of any real or personal property through a pattern of criminal street gang activity. <p>A violation of this section is a Class H felony, except that a person who violates subdivision (a)(1) of this section, and is an organizer, supervisor, or acts in any other position of management with regard to the criminal street gang, shall be guilty of a Class F felony.</p> <p>(b) As used in this Article, "criminal street gang" or "street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that:</p> <ol style="list-style-type: none"> (1) Has as one of its primary activities the commission of one or more felony offenses, or delinquent acts that would be felonies if committed by an adult; 	<p>§ 14-50.16A. Criminal gang activity.</p> <p>Definitions. – The following definitions apply in this Article:</p> <ol style="list-style-type: none"> (1) Criminal gang. – Any ongoing organization, association, or group of three or more persons, whether formal or informal, that (i) has as one of its primary activities the commission of criminal or delinquent acts and (ii) shares a common name, identification, signs, symbols, tattoos, graffiti, attire, or other distinguishing characteristics, including
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<p>(2) Has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity; and</p> <p>(3) May have a common name, common identifying sign or symbol.</p> <p>(c) As used in this Article, "criminal street gang activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the person's involvement in a criminal street gang or street gang. An act or acts are included if accompanied by the necessary mens rea or criminal intent and would be chargeable by indictment under the following laws of this State:</p> <p>(1) Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).</p> <p>(2) Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 40, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.</p> <p>(d) As used in this Article, "pattern of criminal street gang activity" means engaging in, and having a conviction for, at least two prior incidents of criminal street gang activity, that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2008, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity. Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity. (2008-214, s. 3; 2015-286, s. 1.1(1).)</p>	<p>common activities, customs, or behaviors. The term shall not include three or more persons associated in fact, whether formal or informal, who are not engaged in criminal gang activity.</p> <p>(2) Criminal gang activity. – The commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit (i) any offense under Article 5 of Chapter 90 of the General Statutes or (ii) any offense under Chapter 14 of the General Statutes except Article 9, 22A, 40, 46, or 59 thereof, and further excepting G.S. 14-82, 14-145, 14-183, 14-184, 14-186, 14-190.9, 14-247, 14-248, or 14-313 thereof, and either of the following conditions is met:</p> <p>a. The offense is committed with the intent to benefit, promote, or further the interests of a criminal gang or for the purposes of increasing a person's own standing or position within a criminal gang.</p> <p>b. The participants in the offense are identified as criminal gang members acting individually or collectively to further any criminal purpose of a criminal gang.</p> <p>(3) Criminal gang leader or organizer. – Any criminal gang member who acts in any position of management with regard to the criminal gang and who meets two or more of the following criteria:</p> <p>a. Exercises decision-making authority over matters regarding a criminal gang.</p> <p>b. Participates in the direction, planning, organizing, or commission of criminal gang activity.</p> <p>c. Recruits other gang members.</p> <p>d. Receives a larger portion of the proceeds of criminal gang activity.</p> <p>e. Exercises control and authority over other criminal gang members.</p>
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	<p>(4) Criminal gang member. – Any person who meets three or more of the following criteria:</p> <ul style="list-style-type: none"> a. The person admits to being a member of a criminal gang. b. The person is identified as a criminal gang member by a reliable source, including a parent or a guardian. c. The person has been previously involved in criminal gang activity. d. The person has adopted symbols, hand signs, or graffiti associated with a criminal gang. e. The person has adopted the display of colors or the style of dress associated with a criminal gang. f. The person is in possession of or linked to a criminal gang by physical evidence, including photographs, ledgers, rosters, written or electronic communications, or membership documents. g. The person has tattoos or markings associated with a criminal gang. h. The person has adopted language or terminology associated with a criminal gang. i. The person appears in any form of social media to promote a criminal gang. (2017-194, s. 4.)
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